



**Michigan Supreme Court
State Court Administrative Office**

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DATE: August 1, 2003

TO: All Chief Circuit Judges
cc: Family Division Judges
Friends of the Court
Family Division Administrators
Circuit Court Administrators

FROM: John D. Ferry, Jr., State Court Administrator

SUBJ: SCAO Administrative Memorandum 2003-07
Confidentiality and Access to Friend of the Court Records

Section 19 of the Friend of the Court Act (MCL 552.519) provides that the State Court Administrative Office (SCAO), Friend of the Court Bureau, shall develop and recommend guidelines for conduct, operations, and procedures for operation of friend of the court offices. The Friend of the Court Act also requires that each friend of the court take all necessary steps to adopt office procedures to implement the act, Supreme Court rules, and the recommended policy and procedures of the State Court Administrative Office, Friend of the Court Bureau. MCL 552.503(6).

Public Act 366 of 1996 creates citizen advisory committees (CACs) to advise the county commissioners and the court concerning friend of the court matters. A CAC may obtain certain types of friend of the court records in order to allow it to perform its duties. MCR 3.218, Access to Friend of the Court Records, was amended to implement the act. Parties, attorneys, third parties, and agencies may also have access to friend of the court records.

This memorandum replaces SCAO Administrative Memorandum 2001-05 "Citizen Advisory Committee Access to Friend of the Court Records". The policy reflects new federal requirements that direct states to limit access to records when family violence is indicated in a case, provides new direction on how records may be accessed, and contains tables of privileged communications and confidential agency records.

Should you have any questions or comments regarding this policy, please contact Tim Cole at (517) 373-5975.

Access to Friend of the Court Records

A. Introduction:

1. General.

Circuit court and friend of the court (FOC) records are not subject to Freedom of Information Act requests. MCL 15.232(d)(v) specifically exempts the judiciary from the Freedom of Information Act.

Court rules govern when FOC records, may be released to selected individuals and agencies. Parties, attorneys, lawyer guardian ad litem, Family Independence Agency protective services personnel, and CACs have standing under MCR 3.218. The rule also provides a procedure governing the chief judge's exercise of discretion to allow CAC access to appropriate records of an FOC.¹

The right to access FOC records is also subject to the local court's discretion. MCR 3.218(H) allows the court, by administrative order adopted pursuant to MCR 8.112(B), to make reasonable regulations to protect FOC records and to prevent excessive and unreasonable interference with the discharge of FOC functions. A model administrative order is attached as Appendix C.

2. Privileged and Confidential Records.

FOC records contain information that could be inadmissible in court proceedings or that could be non-discoverable due to the privileged nature of the information. Some documents may include a mixture of privileged and non-privileged information. Release of those documents would violate the privilege unless privileged information is expunged from the documents before they are released. A list of selected privileged communications is attached as Appendix A.

FOC records also contain information from other government agencies that may have restrictions regarding its release when a party requests the information directly from the agency. For these reasons, information provided by a governmental agency to an FOC, with a request that it be kept confidential, should remain confidential. A selected list of government agency records that may be confidential is attached as Appendix B.

Not all information received from an agency that is marked confidential is confidential to the party requesting it, and not all privileges are absolute. Privileges must be raised by someone with standing to raise them.

¹ MCR 3.218 was modified effective April 1, 2001 to be consistent with sections 4b and 4c of Public Act 551 of 1998. The act requires that, under the chief judge's supervision, the friend of the court office must provide citizen advisory committees with access to certain records and information necessary for the committee to perform its functions as prescribed by the act. This act also establishes the types of information which cannot be provided except upon direction of the court.

MCR 3.218(C)(2) provides for notice to the parties of a CAC request for confidential information to allow a party to assert a privilege.

3. Family Violence Indicator.

In 1996, the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) modified IV-D statutes to require states participating in the program to protect individuals against domestic violence. Information obtained (or obtainable) through the IV-D program is confidential when the release of the information may result in physical or emotional harm to a party or child [42 USC 654(26)]. Title IV-D program participants are alerted that physical or emotional harm is possible by the presence of the “Family Violence Indicator” (FVI) [45 CFR 307.11(f)(1)(x)] in the federal case registry.² The FVI is required to be set in a case, when a personal protection order is entered with respect to a party or child in a case or when a participant in the IV-D program has reason to believe that the release of information concerning a person may result in physical or emotional harm to the party or child [42 USC 654(26)(B and C)]. When the FVI is set for a case, states must prohibit the release of information on the whereabouts of a party or child to the case. The FVI is fully effective in Michigan with the implementation of MiCSES version 2.4.

4. Motion for Access to Records.

A person who is denied access to a record may file a motion for access to the record under MCR 3.218(G). The rule does not provide detail as to the manner in which the court should address requests to access privileged and confidential records. Information should be handled differently, depending on various factors. Important factors are:

- the standing of the person or entity requesting information;
- the type of information requested;
- the rights of other parties concerning the information;
- the ease with which the information can be produced, and
- legal requirements concerning the release of information.

B. Requests by Specific Individuals and Entities:

1. Information Requested by CACs.

a. In general.

- 1) A CAC is to review and investigate grievances in three circumstances:

² The FVI is governed by AO 2002-3.

- when a party to a domestic relations matter who has a grievance concerning office operations files the grievance directly with the CAC;
 - as part of a random selection and review of grievances submitted directly to the FOC office; and,
 - where a grievance alleges that a decision was made based on gender rather than the best interests of the child.
- 2) A CAC may hold a formal or informal hearing on a grievance submitted to it. Public Act 551 of 1998 modified the Friend of the Court Act to require FOCs, under the chief judge's supervision, to provide CACs with a random selection of grievances, case records, and other information pertaining to the case of a party who has filed a grievance with the CAC. The Act further provides that a CAC is allowed access to information regarding the procedures used by the office to carry out its responsibilities as defined by statute, court rule, or Friend of the Court Bureau policy or procedure; as well as access to information regarding the administration of the FOC office, including budget and personnel information. The court rule provides that certain types of information should remain confidential. Pursuant to federal law, the release of information concerning the whereabouts of a party should not be disclosed when a family violence indicator is set for the case.³
- b. Requests for information regarding the procedures used by the office to carry out its responsibilities as defined by statute, court rule, or the bureau MCL 552.504b(1)(b) and information regarding the administration of the FOC office, including budget and personnel information [MCL 552.504b(1)(c)].
- 1) The CAC shall submit a written request in letter format to the chief judge, with a copy to the FOC when asking for information from the FOC. The CAC shall give a sufficient description of the information requested to allow the FOC to comply with the request, also specifying how the information is to be received (e.g., in the FOC office, at a committee meeting, obtaining copies, etc.).
- 2) If the chief judge approves the request, a letter should be sent to the CAC with a copy to the FOC stating that access will be allowed. If a request is denied, the chief judge should specify what information will be provided, or how the CAC could narrow its request to obtain a more favorable determination.

³ AO 2002-3 provides that a family violence indicator should be set under certain circumstances. When the family violence indicator is set, the order provides that the whereabouts of individuals for whom the indicator is set cannot be disclosed.

- c. Request for case records and other information pertaining to the case of a party who has filed a grievance with the CAC [MCL 552.504b(1)(a)].
- 1) The CAC should submit its request to the FOC on SCAO Form 72a.
 - 2) Within five business days of the receipt of the request, the FOC Administrator, or designated employee, shall review the request and determine whether it contains a request for information that may be confidential under MCR 3.218. If the request does not ask for information that may be confidential, the request should be approved. If the request asks for information that may be confidential, the FOC must notify the parties of the request.
 - 3) Upon making a determination that no notice is required, or after a court order granting access is effective, the FOC Administrator or designated employee shall notify the CAC and shall immediately facilitate access.
 - 4) If notice is required, the FOC Administrator or designated employee shall notify the interested parties and the CAC that they have 14 days from the date of the notice to submit written comments on the request to the judge assigned to the case. [MCR 3.218(c)(2)].
 - i. After the expiration of 14 days, the judge assigned to the case shall determine whether to approve the request, deny the request, or approve the request subject to terms and conditions to protect the rights of a party or the well-being of a child. [MCR 3.218(c)(2)].
 - ii. When the judge assigned to the case determines that access is granted, the judge may impose such terms and conditions as are appropriate to protect the rights of a party or the well-being of a child. [MCR 3.218(c)(2)].
 - iii. The judge's decision is intended to be an administrative decision, not a decision on the merits of the legal issues raised. Once the administrative decision is made, any party may file a formal motion to obtain a legal decision on the merits.

2. Other Court Access.

There are some documents that are provided to courts and their agencies that should not be shared with other court agencies. For instance, IV-D case information cannot be used for purposes other than those permitted under IV-D requirements. While the information may be disclosed for IV-D purposes to another court agency and have some incidental use for another purpose, it cannot be disclosed when it would not have a IV-D purpose. Similarly, adoption records, diversion records, and other records used by one court agency or officer, may not be disclosed to another court agency. See Appendices A and B for lists of confidential and privileged information.

3. Litigant Access.

MCR 3.218(B) provides that parties must be given access to FOC records in their case other than confidential information. A party should request access to records on form FOC 72 and file it with the FOC. Within five business days of the request, the FOC should provide an answer to the party. No information concerning an individual's address or whereabouts shall be provided to another person when an FVI is set for the individual.

4. Other Authorized Access.

MCR 3.218(B) provides that third party custodians, guardians, guardians ad litem, or counsel for a minor, lawyer-guardians ad litem, and attorneys of record must be given access to FOC records related to the case, other than confidential information. These individuals should request access to records on form FOC 72 and file it with the FOC. Within five business days of the request the FOC should provide an answer to the request.

5. Agency Access.

Protective services personnel must be given access to FOC records relating to the investigation of abuse and neglect [MCR 3.218(D)]. Personnel from the Office of Child Support and the Family Independence Agency (FIA) must be given access to FOC records required to perform the functions required by title IV-D of the Social Security Act [MCR 3.218(E)].

Auditors from state and federal agencies must be given access to FOC records required to perform their audit functions [MCR 3.218(F)].

The prosecuting attorney must be given access to FOC records required to perform the functions mandated by title IV-D of the Social Security Act, 42 USC 651 et seq.

For prosecutor requests for information that arise from criminal prosecutions, where the requests are not a function pursuant to the IV-D contract of a prosecutor the friend of the court should not disclose records unless the court approves of the disclosure. The proper method to obtain documents is set forth in MCR 3.218(G).⁴

Normally, records should be requested by memo or letter. In the absence of advance notice, if the immediate review of records is necessary, the FOC administrator should be present to safeguard the contents of a file while the agency personnel are reviewing the file.

6. Media Access.

The chief judge of the circuit court is responsible for directing and supervising the friend of the court [MCL552.503]. All inquiries from, and responses to, the media are at the designation, discretion, and direction of the chief judge. MCL 3.218 would prohibit release of information to the media unless the information is provided under IV-D regulations. Providing information concerning a IV-D case is inappropriate except for the purpose of collecting support⁵.

A court may receive the assistance of the media to publish information on the status of arrears where the purpose is to support enforcement. Courts may not, however, release such information when the purpose does not fall under the guidelines of federal regulations (e.g., information released to support a media piece as opposed to information released pursuant to an offices specific plan for enforcement).

7. Other Access.

MCR 3.218 specifies who has standing to request information. No one other than those individuals listed in MCR 3.218 have standing to obtain records except by motion and order. Requests from private entities, such as companies seeking

4 Occasionally, a friend of the court may receive a subpoena for documents or other information. A subpoena under MCR 2.506 serves as a court order requiring a person to whom it is directed to appear and disclose information. The subpoena would not be used for the purposes of criminal discovery because it is designed to be used in civil proceedings and is designed to be used in connection with the case in which it is filed. Further, because the friend of the court is part of the court, a subpoena to the friend of the court would constitute the court ordering itself to appear and produce records. In contrast MCR 3.218 determines the question of what access will be given to the person requesting access to friend of the court records.

5 Until recently, it was believed that IV-D regulations prohibited any release of information to the media. Upon further inquiry, SCAO has discovered that release of information, and prohibition on the release of information, is governed by the state's child support collection program. The State of Michigan has no specific collection program involving the media. Therefore, the determination is a matter for local discretion. The child support program is working on a plan for a statewide collection program involving the media. Until in place, local offices should formulate specific plans to deal with release of information, specifying how, and the extent to which, the media will be involved in its collection program.

credit information or private child support collection agencies, should be allowed only by court order.

C. Manner of Access:

1. General.

The FOC Administrator, or designated employee, has discretion concerning how documents should be provided. Whenever possible, the manner in which documents are provided should correspond to the requested method.

The FOC Administrator may direct other methods of access if the requested method would be burdensome or disruptive to the office.

The local circuit court should adopt an administrative order pursuant to MCR 8.112(B) to make reasonable regulations necessary to protect FOC records and to prevent excessive and unreasonable interference with the discharge of FOC functions [MCR 3.218(H)].

2. Personal Inspection.

During personal inspection of a record, FOC personnel should be present at all times to insure that the documents are protected while records are being inspected. Confidential information in the file should be removed in advance of inspection so that incidental access is not permitted.

3. Copying.

If documents are copied, the costs should be charged in accordance with the court's administrative order as required by MCR 8.119(E)(4)(b) and received in advance for making copies. Copies for other government agencies and auditors should be made available according to local policy.

4. Oral Transmission.

In general, information should not be provided orally unless necessary. If information is provided over the phone, there must be a means of identifying the individual to whom the information is given and ascertaining that the person is entitled to receive the information. A record should be made of the release of the information.

5. Family Violence Indicator.

No information concerning an individual's address or whereabouts shall be provided to another person when an FVI is set for the individual.

D. Other Access to Information:

FOC records are not the only source of information that may be available to a party. Circuit court files may be inspected by the public unless access is restricted by court rule, statute, or order sealing a court record. Copies of documents may be obtained subject to MCR 8.119(E)(4). Persons interested in inspecting or copying FOC records should be advised of this alternate source for records which will not require filing a special request for access.

APPENDIX A

Privileged Communications

The following table contains selected information concerning privileged communications. The table is not an exhaustive collection. It will be updated periodically, supplied as a replacement appendix and available on the Michigan Supreme Court website at <http://courts.michigan.gov/>.

Communication	Statute
Communication between a domestic relations mediator and party and the parties in the presence of a mediator.	MCL 552.513
Minister or Christian Science practitioner/confessions.	MCL 600.2156
Physician/information disclosed in treatment.	MCL 600.2157
Domestic Violence Counselor/victim.	MCL 600.2157a
Husband/Wife/testimony against the other. See MCL 780.169 and 552.1328(8)	MCL 600.2162
Teachers, guidance officers, school executives, or professional persons engaged in character building in public schools or other educational institutions who record student's behavior.	MCL 600.2165
Licensed professional counselor or limited licensed counselor and client.	MCL 333.18117
Information relative to the care and treatment of a dental patient.	MCL 333.16648
Information from designated medical research projects.	MCL 333.2632
Pharmacist, scientific investigator, hospital, pharmacy, or other person licensed registered or permitted to dispense or conduct research with respect to a controlled substance, concerning identity of patient or research subject.	MCL 333.7516
Counselor in family counseling service and the person counseled.	MCL 551.339
Certified social worker, social worker, social work technician, employee, or officer of an organization that employs them and a client.	MCL 333.18513

APPENDIX B

Confidential Agency Records

The following table includes selected information on agency records and information that may be classified as confidential. This list is not exhaustive. It will be updated periodically, supplied as a replacement appendix and available on the Michigan Supreme Court website at <http://courts.michigan.gov/>.

Description	Citation
<p>All information classified as confidential by the laws and regulations of title IV, part D of the Social Security Act, 42 USC 651 et seq. which include:</p> <p>Information regarding the administration of programs which provide assistance or services based on need (e.g., TANF certification and decertification forms, or Medicaid or Food Stamp documentation);</p> <p>Michigan Department of Labor records which include wage and claim information obtained through the Absent Parent/Labor Department (APL) File Match System. This includes Report APL 013 and match results on magnetic tape;</p> <p>Federal tax offset information, including federal tax returns, Reports CS-100 or CS-012, as restricted by the Internal Revenue Service (Internal Revenue Code Section 6402); and,</p> <p>Michigan Department of Labor wage and claim information pursuant to the Michigan Employment Securities Act, which includes unemployment or employment records.</p>	42 USC 653
Any information concerning the whereabouts of a person when a family violence indicator is set for the case.	42 USC 654(26) 45 CFR 307.11(f)(1)(x)
Income information supplied by an employer.	MCL 552.518(3)
Information from medical research projects.	MCL 333.2631
Information from financial institutions provided pursuant to a demand by FIA for the purpose of investigating eligibility for aid or to establish, locate and collect child support.	MCL 400.83(4)
Information provided to a state agency pursuant to condemnation proceedings.	MCL 213.55(2)
Information provided to the Michigan export development authority, except to the extent that the person or entity which provided the information consents to release.	MCL 447.156(3)
Records of a youth agency which pertain to a public ward.	MCL 803.308
Information from the FIA central registry of child abuse.	MCL 722.627(2)
Information provided to foster parents concerning a child's medical, abuse, and behavioral history.	MCL 722.954(3)

APPENDIX C

Model Local Administrative Order

[LOCAL COURT LETTERHEAD]

Administrative Order [year] - [number]

ACCESS TO FRIEND OF THE COURT RECORDS

IT IS ORDERED:

This administrative order is issued in accordance with Michigan Court Rule 3.218, Confidentiality and Access to Friend of the Court Records. The purpose of this order is to allow reasonable access to friend of the court records upon approval by the State Court Administrative Office.

1. The general definitions from MCR 3.218 concerning records, access, and confidential information apply to this order.
2. Procedure for Individual Access to Friend of the Court Records.

The individuals authorized in MCR 3.218 may have access to friend of the court records, other than confidential records. Individual requests for access to friend of the court records shall be addressed according to the following procedure:

- a. A person wishing to access friend of the court records shall file a form FOC 72, Request to Access Friend of the Court Records and Decision, with the friend of the court or designated employee. A written request for access to records made in a format other than the request form shall be accepted by the friend of the court if sufficient information regarding the request is provided. The person requesting access to records must verify his eligibility for access as listed in MCR 3.218.
- b. Within five working days of the receipt of the request, the friend of the court or designated employee shall determine if the request will be honored or denied, in full or in part.
- c. Upon making a determination, the friend of the court or designated employee shall notify the person requesting access to records and shall immediately facilitate access if access has been approved, in full or in part. If access is denied, the friend of the court or designated employee will state the reasons for denial.

3. Procedure for Agency Access to Friend of the Court Records.

The agencies authorized in MCR 3.218 may have access to friend of the court records, which includes confidential records, in order to perform their assigned duties as prescribed by law. Agency requests for access to friend of the court records shall be addressed according to the following procedure:

- a. An agency or employee of an agency designated in MCR 3.218, wishing to access friend of the court records, shall submit its request to the friend of the court in writing on agency letterhead. An auditor shall make its request in the customary manner for an audit of the type being conducted.
- b. Within five working days of the receipt of the request, the friend of the court or designated employee shall determine if the request will be honored or denied, in full or in part. In the absence of advance notice by an agency that is entitled to review the records, if the immediate review of records is necessary, the Friend of the Court or designated employee should make a person available for safeguarding the contents of a file while the agency personnel are present.

4. Procedure for Citizen Advisory Committee Access to Friend of the Court Records.

The citizen advisory committee shall have access to friend of the court grievances and may have access to information other than confidential information, necessary to carry out its duties.

The citizen advisory committee shall have access to confidential information sufficient to carry out its duties upon clear demonstration by the committee that the information is necessary to the performance of its duties and that the release will not impair the rights of a party or the well-being of a child involved in the case.

Citizen advisory committee requests for access to friend of the court records shall be addressed according to the following procedure:

- a. Requests for information regarding the procedures used by the office to carry out its responsibilities as defined by statute, court rule, or the bureau, MCL 552.504b(1)(b), and information regarding the administration of the friend of the court office, including budget and personnel information MCL 552.504b(1)(c):
 - 1) When asking for information from the friend of the court, the citizen advisory committee should submit a written request in letter format to the chief judge, with a copy to the friend of the court.

The citizen advisory committee should give a description of the information requested and wait a sufficient amount of time to allow the friend of the court or designated employees to comply with the request. The citizen advisory committee should also specify how it wants to receive the information (e.g. in the friend of the court office, at a committee meeting, obtaining copies).

Upon receipt of the request, the chief judge will approve or deny the request and send a letter to the advisory committee, with a copy to the friend of the court. The letter should detail what access will be allowed and, if no access is granted, the reason for the denial of all or part of a request.

b. Requests for case records and other information pertaining to a party who has filed a grievance with the citizen advisory committee. MCL 552.504b(1)(a):

- 1) The citizen advisory committee should submit a request on SCAO form 72a.
- 2) Within 5 working days of receipt of the request, the friend of the court or designated employee shall determine if the request will be approved. If the friend of the court determines that the request may be for confidential information, the friend of the court must determine whether to approve the request or to notify interested parties of the request and obtain the court's approval to release the information.
- 3) Upon making a determination that no notice is required, or after a court order granting access is effective, the friend of the court or designated employee shall notify the citizen advisory committee and shall immediately facilitate access.
- 4) If notice is required, the friend of the court or designated employee shall notify the interested parties and the citizen advisory committee and advise that they have 14 days from the date of the notice to submit written comments on the request to the judge assigned to the case.
- 5) After the expiration of 14 days, the judge assigned to the case shall determine whether to approve the request, deny the request, or approve the request subject to terms and conditions to protect the rights of a party or the well-being of a child.
- 6) When the judge assigned to the case determines that access is granted, the order shall state that the access shall be allowed seven

days after the decision is ordered to allow interested parties to file motions respecting the decision. The judge's decision is an administrative decision, not a decision on the merits of the legal issues raised. Once the administrative decision is made, any party may file a formal motion to obtain a legal decision on the merits.

5. All information in records concerning the whereabouts of a person whose address is subject to an order of confidentiality must be removed before the records are made available pursuant to any request pursuant to MCR 3.218.
6. Copying costs will be assessed in accordance with the court's local administrative order as required by MCR 8.119(E)(4)(b) for requests pursuant to paragraphs 2 and 4.

Effective Date:

Date:

Chief Judge Signature:

INSTRUCTIONS for Model 1

Revised MCR Subchapter 3.200 - Domestic Relations Actions included a new rule regarding access to friend of the court (FOC) records. The rule was modified effective April 1, 2001, to allow access to records for lawyer-guardian ad litem and citizen advisory committees. Subrule (H) allows courts to regulate access to records by submitting a local administrative order for approval to the State Court Administrative Office (SCAO). The SCAO has developed this model local administrative order for courts to adopt for this purpose.

Friend of the court offices must assess how they will separate confidential from non-confidential information and make arrangements for file or document viewing. The model order and accompanying forms can be used to facilitate this process by providing model steps for parties or other qualified individuals to request access; and reasonable time frames for FOC staff to respond to requests.

Courts choosing to use this model should customize it to their court and submit it to the SCAO for approval pursuant to MCR 8.112. If you have any questions or are in need of further information, please contact Friend of the Court Bureau Analyst Tim Cole or Toni Beatty at 517/373-5975.